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OBSERVATIONS R

ON THE
POWER of ALIENATION

IN THE
CROWN

Before the FIRST of QUEEN ANNE,

Supported by PRECEDENTS and

The OPINIONS of many learned JUDGES.

Together with some REMARKS on the
CONDUCT of ADMINISTRATION

RESPECTING THE
CASE of the Duke of PORTLAND.

L O N D O N:

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CONSTITUTIONS

OF THE

POWER OF PARLIAMENT

IN THE

REIGN OF

THE FIRST OF GEORGE THE FIRST

BY

THE LORDS OF THE COMMONS

IN PARLIAMENT ASSEMBLED

AND

THE HOUSE OF LORDS

IN THE YEAR OF OUR LORD ONE THOUSAND SEVEN HUNDRED AND SEVENTEEN

AND

THE YEAR OF THE REIGN OF THE FIRST OF GEORGE THE FIRST

BY

THE HOUSE OF COMMONS

OBSERVATIONS, &c.

TO destroy the mutual confidence which should ever subsist between a king and his people, or to establish, even in idea, a separation of their interest, is perhaps the most fatal and irreparable injury that any Minister can do to his Country or Sovereign.

The sovereign power in all states being originally derived from the people, and instituted to promote their happiness, the security of their rights and liberties, is undoubtedly the primary object in all well-regulated governments; but as that object could never be attained, unless the person or persons, in whom the sovereignty is lodged, were themselves secured from violence, and invested with such powers, honours and advantages, as to enable them to support the cares, and discharge the duties, of their laborious and important trust: from hence arises a secondary object of government, the sup-
B
port

port of the safety, honour, and authority of the Sovereign.

These two great objects include all the purposes of civil society; and as neither of them can long exist without the other, there results from thence the most strict and perfect mutuality of interests, between the People and their Sovereign, that exists in all the various relations of the moral system.

For how can that people hope to flourish, whose Sovereign is deprived of the necessary means to promote their interests, and protect their rights? Or what share of security or happiness can that Sovereign enjoy, who reigns over an oppressed, miserable, spiritless people, who equally want the inclination and ability, to defend him against foreign or domestic invaders, to assist him in the execution of his legal powers, or support him in the enjoyment of his just advantages.

It is therefore a fundamental maxim in politics, that the interests of the Sovereign and Subjects are the same; and whoever attempts to separate them, dissolves the whole frame of government, and reduces

duces all things to a state of anarchy and confusion.

If this be true of civil governments in general, it is more peculiarly applicable to our happy constitution; where the laws have established such an intimate connection, and mutual dependance, between the different bodies which compose the state.

Had this country remained in the same situation it has been in for the last fifty years; had public affairs gone on in *only* the usual course of ministerial corruption on the one hand, and self-interested opposition on the other, I might regret in silence the depravity of the times, but should never have troubled the public with my ideas in print.

But when we have beheld our Sovereign, ever since his accession to the throne, in the hands of those, who have done all in their power to alienate the affections of a loyal people from an amiable and virtuous King.

When we have seen a ruinously expensive, but vigorous, successful, and

glorious war, terminated by an inadequate and ignominious peace,

When we have seen the authority and dignity of the legislature, exposed to the insults of licentious colonists, by the headstrong ill-judged impetuosity of one, and the weak, pusillanimous compliance of another administration.

When we have seen the odious and oppressive system of the excise-laws wantonly extended.

When we have seen a Member of the British Parliament, who *seditiously dared to declare himself an advocate for the liberties of the people*, driven into exile, and persecuted to outlawry, for publishing, out of the House, such observations on the speech of the Minister, as have been a thousand times uttered in the House with impunity.

When we have seen the liberty of the people invaded in the most daring and outrageous manner, by issuing general warrants, by illegally arresting the persons of his Majesty's subjects, breaking open their most private repositories, ransacking

sacking and carrying off their papers, and betraying their dearest and most important secrets to a set of lawless messengers.

When we have seen, at a time in which the nation was loaded with one hundred and forty millions of debt, the public money squandered in prosecutions against the assertors of liberty, in places and pensions to our representatives, to procure their sanction to *such measures*; and in bribing our electors to re-elect *such representatives*.

In fine, When we have seen the baneful influence of a justly-hated favourite, spread its contagion through every successive administration (one short one only excepted). And when we still see the same influence, giving birth to measures as subversive of the true interests of the crown, as of the rights and liberties of the people, I should think myself equally deficient in my duty to my Sovereign and the community, if I did not endeavour to contribute my mite, towards setting such measures in a just light, and exposing the authors of them to the detestation they deserve.

For

For, when private property comes to be invaded by the servants of the crown, under sanction of the authority of their royal master, the state of public affairs grows too serious and important to admit of indifference or neutrality, in any man who is a lover of his country. It then becomes the duty of every subject, according to his situation in life, to endeavour, by all the legal means with which that situation furnishes him, to put a stop to such measures, and obtain a redress of such grievances, as tend to produce the most fatal calamity that can happen to any state, a disunion of the interests and affections of a prince and his people. As I am not, ~~at present~~, a member of either house of parliament, nor invested with any public office or employment, the only means I have to contribute to this end is, by submitting to the public my ideas on the late most flagrant instance of the selfish and arbitrary disposition of the Favourite.

His
The taking away from the duke of Portland an estate which has been 70 years in the possession of his family, and giving it to his own son-in-law, Sir James Lowther,
 is

is a measure which, for some time past, has very deservedly attracted the attention of the public; a measure, indeed, of a very extraordinary and alarming nature, and unexampled in the history of former times, in *this country*.

In offering my sentiments, on this occasion, to the public, I shall observe the following method:

I shall, first, make some observations on the publications relative to this affair; particularly, "The Duke of Portland's Case," printed for Almon; and, the Reply to it, first published in the *Gazetteer*, and afterwards reprinted for Kearsly. I shall then, from such of the facts which have been made public (for I pretend to know no other) as stand uncontradicted, or seem admitted on all hands, endeavour to collect the true state of the case.

In the next place, I shall lay down some principles with regard to royal grants and resumptions in general, considered in point of law; supported by such authorities as will, I apprehend, render

der them indisputable: and shall apply those principles to the particular case of the grant in question. And shall conclude with some reflections on the conduct of the board of Treasury; first supposing the strict legal merits to be with the crown; and, secondly, supposing them with the duke of Portland.

The "Duke of Portland's Case" stands in no need of any panegyric. The facts contained in it are stated with great strength and perspicuity, and supported by such authorities that they neither have been, nor can be, contradicted: and the observations upon those facts (independent of the ornaments of a most animated style) breathe such a genuine and manly spirit of liberty, as can never fail to insure the approbation of a free people.

As to the impotent scurrility and abuse contained in "the Reply," &c. it neither deserves nor requires an answer; the impartial public will judge which of these writers most "expose their want of common sense to the ridicule of all mankind," (Reply, p. 19.) and *whose parents have conducted their education most injudiciously,*

judiciously, in teaching them to read and write.

If I was disposed to retort any of that writer's paultry witticisms upon himself, he has furnished me with ample grounds to agree with him, in his confession, that "as to the whole extent of language, he understands but few in that extent," and to assert, that, if he should be admitted to "understand all that exist, one must" (Reply, p. 20) be excepted; which is, English.

And with this I shall leave the Replier's attempts to be witty, his decency, and the elegance of his stile, to whatever fate the public may think they deserve.

But, before I have done with this hireling, I shall take notice of some principles which he very confidently, not to say impudently, lays down as law, unsupported by any other authority than his own dictum; and of those few attempts towards argument, which I meet with in his work, lest they should happen to mislead the ignorant and unwary.

His first assertion and argument is this :
 " The crown lands are private property;
 " and the king is limited in his rights of
 " them by the *law*, and according to *these*
 " *laws* the king may not grant away an estate
 " tail in the crown; and the law takes care
 " to preserve the inheritance of the king

“ for the benefit of his successors.” This sentence being marked as a quotation, the writer should have cited his authority; but, waving this, let us proceed: “ Thus the sovereign, like the subject, is “ controuled by law; and his heirs, *like those of other men*, cannot be deprived “ of their lawful rights.”

“ From a dispassionate survey of *this law*, it is *self-evident*, that king William could not legally convey the forest “ of Inglewood *for ever* to the duke of “ of Portland’s great grandfather, if there “ was any grant at that time made, unless it was either for a certain term of “ years, for 99 years determinable on “ three lives, or some such limited duration, it must have been illegal; and “ this is clear, from the prohibition “ which the laws ordain against the king’s “ depriving his successors of their inheritance in their private property.”

I should be glad this writer would favour the public with a definition of a *self-evident* proposition; but, lest he should not chuse that, I will shew the public what the proposition is, which he here asserts to be self-evident; from whence they may form some judgment of the clearness and accuracy of the gentleman’s ideas.

It

It is this :

“ The king may not grant away an
“ estate tail in the crown (that is, the
king himself being tenant in tail, cannot
grant an estate tail) ; * “ therefore king
“ William (being seised in fee) could not
“ grant the forest of Inglewood for ever.”

How far the conclusion follows from
the premisses, I leave any student who
has read the first chapter of Coke Lyt-
tleton to determine. And that student
shall also inform him, what he seems to
be ignorant of, that an estate tail is not
an estate *for ever* ; but that an estate to a
man and his heirs for ever, is called an
estate in fee simple, or in fee ; and that,
though a person who has an estate tail
cannot grant a greater estate than for life,
a person who has an estate in fee may
grant it to whom he pleases, and to his
heirs *for ever*.

I presume it cannot be, as it has not
yet been, questioned, that king William
had an absolute estate in fee simple in the
premisses in question. Taking that for
granted, therefore, I shall proceed to
shew, that he might, by law, dispose of
it, as freely and absolutely, *for ever*, as
any common person might have done.

* For if the assertion is understood in any other sense,
it is not true.

And that, notwithstanding this writer's confident assertions, in regard to what he calls *these laws*, and *this law*, there was no law subsisting in this country, to restrain the crown from alienating its private property, for ever, till the stat. of the 1st of Anne, ch. 7. which statute even our writer (independent of the general rules of law in regard to statutes *ex post facto*, of which I suppose him totally ignorant) if he has ever read it, will not assert to have any operation on a grant made by king William. See the clause of the act.

In the quotations which I may have occasion to use, I shall not follow the example of the writer of the Reply, &c. but shall cite the volume and page, so that if I am unfair in my quotations I may be instantly detected.

“ By common law, before the Statute de
 “ donis, (13 Ed. I. c. 1.) when the king
 “ created a conditional fee, there was no
 “ reversion but a possibility; and if the
 “ donee had issue and aliened, the king's
 “ possibility was barred, as well as that of
 “ a common person.” Bac. Abridg. vol.
 IV. 194. Co. Lit. 19, b.

In Gardiner's case, (14th of Cha. II.)
 which is reported in Jones, vol. II. 251,
 “ On a grant by H. VIII. to Michael Stan-
 “ hope, &c. in tail: the heir of the said
 “ Stanhope petitioned Q. Eliz. to grant the
 “ reversion

“ reversion to some persons in fee, to enable him to suffer a recovery, &c. &c.
 “ The queen did accordingly grant the reversion to lord Burleigh and Sir Walter Mildmay *in fee*, and the grant was held
 “ to be good.”

In the earl of Rutland's case, it was resolved by Coke, chief justice, and other judges, among other points, as follows,
 “ Other inheritances the king has, as well
 “ to use and enjoy himself, as to grant to
 “ another, *scil. the possession, remainder, or reversion*; as houses, lands, rents, commons, herbage and pannage, and the like, *which are parcels of his inheritance.*” Reported by lord Coke himself, in his 8th rep. 56. a.

And the case of Joseph Hornby, in the 7th year of W. III. is very full as to this point. The argument was upon a grant made by king Charles II. of an annuity payable out of the excise, to the said Joseph, his heirs, and assigns for ever. And it was held by the judges, that the king may alien even those inheritances which are settled by parliament on him and his successors.

The arguments of the lord chief justices Treby and Holt, setting the principles of the law in this particular in a very clear light, I shall transcribe some passages from them at length.

Treby

Treby said,

“ The 1st point in this case is, whether
 “ these letters patent are valid in law, and
 “ sufficient to bind the king; and, as to
 “ this, I am of opinion, that the letters
 “ patent are valid, and sufficient to bind
 “ the king. It is objected that the word
 “ successors in the statute by which this
 “ revenue is given, intends that it shall
 “ be fixed in the crown and unalienable.
 “ To this I answer, that there are several
 “ other statutes by which lands and other
 “ revenues were given to the king, by the
 “ same words that are in this statute, and
 “ yet the kings of England had always
 “ power to alien them, as appears in Berk-
 “ ley’s case, in Plowden 227, and by the
 “ statute of monasteries, Vaugh. 62, 2 Rol.
 “ abrid. 198, &c. so king Charles II. hav-
 “ ing an estate of inheritance in this branch
 “ of his revenue, had the same power to
 “ alien this, as he had to alien any other
 “ part of it.

“ It has been strongly objected, that if
 “ the king should have a power to alien
 “ all his lands and revenues, it might be
 “ of a pernicious consequence to his sub-
 “ jects, &c.

“ To this I answer, that this might be
 “ some reason to induce the making an
 “ act of parliament to restrain the king’s
 “ power of alienation; but since here the

“ par-

“ parliament has thought fit to give the
 “ king such a power, we ought to acqui-
 “ esce and submit to it.” 5th Mod. 46.

Holt said,

“ As to the 1st question, I hold the
 “ grant to be good, and *all that have ar-*
 “ *gued here have concurred in the same*
 “ *opinion.*

“ I hold that king Charles II. might
 “ charge this branch of his revenue, and
 “ my reason for my opinion is but short.
 “ It is *because the king was seised of an*
 “ *estate in fee of this revenue, for to such*
 “ *an estate a power of alienation is incident.*”
 Lit. sect. 360.

“ It is ^{no} objection, that this revenue
 “ was given to the king under a trust;
 “ for notwithstanding that he might alien
 “ it.”

“ The king has nobody required to con-
 “ sent to his alienations. To say that he
 “ may alien by the consent of the estates
 “ of the realm, is as much as to say, he
 “ cannot alien without an act of parlia-
 “ ment, *which he may clearly do.*

“ But that which I insist on is, that it is
 “ absurd in its nature to restrain the king
 “ from alienating his revenues, of which
 “ he is seised in fee. It is against the na-
 “ ture of the being of a king, that he
 “ should have less power than his people,
 “ for before he was king he had power.

“ Now,

“ Now, when the crown descended upon
 “ him, he is seized *jure corona*, and shall
 “ he then have less power over those very
 “ lands, than he had before the descent of
 “ the crown? Shall he be disabled to alien
 “ by being a king? This would be against
 “ a common principle of law, that the de-
 “ scent of the crown takes away all dis-
 “ ability.” Plow. 105, and Dyer.

He then goes on to give farther reasons for this power in the crown, amongst which is the following, which seems remarkably applicable to the present case.

“ *And there ought to be a power in all*
 “ *governments to reward persons that de-*
 “ *serve well, and it has been a constant*
 “ *usage of the kings of England to re-*
 “ *ward persons deserving of the govern-*
 “ *ment out of the crown revenues, by*
 “ *pensions, and giving estates to support*
 “ *the title of earl, and other dignities.*
 “ Seld. tit. of honour, 838. 7 Rep. 12.
 “ And this has been allowed by act of
 “ parliament, as appeareth by 34 H. VIII.
 “ c. 20.”—5 Mod. 53, 54. 1. 55.

I could produce many other authorities to the same purpose, and of equal weight, but I am persuaded these will be more than sufficient to refute the most confident assertion of a ministerial hireling.

But our author having already, in the manner abovementioned, made it appear
self-

self-evident, that king William could not grant the forest of Inglewood for ever, is not satisfied with that, but seems desirous to render it *more self-evident*, which he endeavours thus :

“ That king William had no right to
 “ extend his grant, &c. for ever, is ma-
 “ nifest from the bill which was last
 “ sessions attempted to be brought into
 “ the House of Commons. A motion
 “ was made for leave to bring in a bill
 “ for quieting the possessions of the sub-
 “ ject, and for amending and rendering
 “ more effectual an act of the 21st of
 “ James I. for the general quiet of the
 “ subject, against all pretences of con-
 “ cealment whatsoever.”

I have already shewn, that grants by the crown for ever, before the 1st of Anne, stood in no need of an act of parliament to confirm them; and I shall hereafter shew, that acts of parliament have been thought necessary to rescind them, where they have been judged improper: I shall therefore, in this place, merely consider ~~the~~ argument in itself.

If this writer had ever given himself the trouble to enquire of any one person who knew any thing of the nature of the bill attempted to be brought in last session, or had ever read the statute of James I. to which that bill refers, he

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would

would have found, that neither the one nor the other, have any the least relation to such lands to which the possessors could shew a legal title, either by grant from the crown, or any other means. That grants from the crown are not the object, nor would be any way affected by those laws, but that they related merely to such hereditaments, to which the possessors either had, or could shew, no other title than a sixty years possession. No argument therefore can be drawn from thence, either one way or the other, as to the power of granting in the crown.

What follows manifests a degree of ignorance which I could not have supposed even in him. Speaking of the bill, he says, " It was designed in favour of private property, as it is asserted, and yet both the king *and his subjects*, for the latter are equally included, *were to be thereby rescinded from all power of obtaining their rights and estates, after a sixty years possession*, by those who were not intitled to enjoy them."

Is it possible that this writer can be really ignorant, that by the known established laws of this kingdom, a possession of sixty years is a good title against a subject, and that the person who once had right, has no means of recovering it, unless some act of ownership has been exercised

exercised by himself or his ancestors within sixty years? And that therefore this bill could only be intended to set the crown in this instance on a level with the subject, and to take away the operation of that favourite maxim of prerogative lawyers, that *Nullum tempus occurrit Regi*?

Is it, I say, possible, that this ignorance can be real, or is it only assumed, to give room for the declamations that follow, p. 7. l. 15, &c.? Which declamations, as the law now stands, can only be looked upon as a libel against the established laws of the realm.

I have dwelt the longer on this point, to shew the public how far this gentleman's most positive assertions are to be relied upon; and what sort of propositions they are, which he calls *self-evident*, and to which he recurs with triumph whenever he finds himself hard pressed.

His next argument is this; "According to Mr. Cooper's letter to the duke, it is the opinion of the surveyor-general, that the forest of Inglewood is not included in the grant to the duke of Portland by king William, but that it is now vested in the crown: Hence it appears, the duke lays claim to an estate which is *not only not* his right, but was never granted to his ancestor," &c.

Any

Any person of common sense may, without much logic, see that this argument is incomplete, and that the conclusion has not the least connection with the premises; for how does it follow, that a thing is really so, because the surveyor-general says it is, unless we suppose it impossible that the surveyor-general should be either mistaken in a very abstruse question, or induced by any power or influence, to act or speak contrary to his opinion.

The argument therefore wants a link, and should stand thus: *The surveyor-general says it is his opinion, &c. He is infallible and incorruptible, therefore, &c.*

How far either he or his deputy is intitled, from the nature of the office (independent of any circumstance of character) to either of those attributes, I shall leave the impartial public to judge, and with them also shall leave the credit of this notable argument, which, I suppose, our writer took for demonstration.

This naturally leads me to another argument, if it may be so called, of this ingenious writer, p. 30, 40. It is drawn from the surveyor-general's report, containing the crown title to the lands in question, and not being published by the duke of Portland.

That the surveyor-general's report does,
upon

upon the face of it, contain a title in the crown to the lands in question, I will readily suppose, without giving either the duke, or the replier, the trouble to publish it.

But does that bring us one bit nearer the determination of the right than we were before? Is it not as easy for the surveyor-general (who has all the records and evidences in his own hands, and refuses to permit an inspection of them as vouchers) to make out a title in the crown, as to assert that there is one, especially assisted by Sir James's lawyers, who undoubtedly know what is a title, tho' the surveyor, or his deputy, may not? Is not, I say, the one as easy as the other; and does not the credit of both equally stand on his single testimony? How far that is to be admitted, as demonstration, I have already considered.

This being the case, what argument can be drawn from the duke's not publishing it? What if, when it is published, it should be found to contain a state of a compleat and perfect title in the crown; or what if the duke should not chuse to publish it, thinking it fit only for a court of law?

What then becomes of the so triumphant challenge to the duke to publish it?

If

If indeed it was a paper, locked up in the duke's private cabinet, to which recourse could be had only through him; or even if it was a record, *secreted in his steward's office*, some argument might perhaps be drawn from an unaccepted challenge to produce it.

But when it is only the copy of a paper, the original of which is in a public office, and perhaps in the possession, but most certainly in the power, of him who gives the challenge, who might himself publish it, if he thought it made for his side of the question, the argument loses all its force; and the impartial public must be of opinion, that no inference can be drawn from this circumstance either one way or the other.

But to proceed: " The reasons (says the Reply) which his grace has published, for attempting to retain the forest of Inglewood, are, that his claim is founded on a grant made the last century by king William to his great grandfather, and his heirs for ever; and confirmed by an uninterrupted possession for more than sixty years."

" On the contrary, the surveyor-general declares, That the lands in question are not included in the grants made by king William to the duke of Portland, and

“ and that they are now vested in the crown.”

I will readily agree with this writer, “ that both these assertions cannot be true;” and will leave the public to determine whether they will believe the duke of Portland, or Mr. Zachary Chambers.

But I will also suggest to my readers what perhaps may not immediately occur to them. The claim of the duke of Portland, as appears from the different publications (from whence alone I take all the facts) is founded on a grant by king William, of the honour of Penrith, with all its appurtenances, &c. Now, if this be the case, these assertions, tho’ they cannot both be strictly and literally true, may yet be, in some measure, consistent. The duke of Portland’s assertion may be strictly true, if the lands in question, are or were appurtenances of the honour of Penrith; and yet Mr. Zachary Chambers’s assertion, “ that the lands in question are not included (that is, not expressly by name included) in the grants,” &c. tho’ it should convey a falshood, may yet be literally true. Whether Mr. Chambers has sheltered himself under such a mean equivocation I cannot say; but this I will say, that his conduct in this affair has left room enough to suspect him capable of it.

As

As to what follows, with regard to the ease with which the duke may confute the assertion of the surveyor-general's report, supposing it false, that is by no means so clear as the author of the Reply asserts. If it be true, that he claims the premises in question, as appurtenances of the honour of Penrith, it will be a matter of a very difficult proof, at the distance of above sixty years; and that is one reason why the wisdom of the law will not suffer (in the case of a subject) a title to be called in question, after an uninterrupted possession of sixty years. To support such a title, requires a long chain of evidence, of a very intricate nature; and from such evidence, the surveyor-general, and the administration, have done all in their power to exclude the duke of Portland, for what reasons, and with what views, any man of common sense may conjecture.

The writer of the Reply speaks, in very high terms, of the obligations of the duke of Portland to the king and his predecessors, for suffering him to enjoy so considerable an estate without any grant at all, or after the grant was expired; but I am persuaded, he was not aware, that that very circumstance furnishes a very strong probable argument in favour of his grace's title.

Every

Every one who knows any thing of king William, and of the history of those times, must know, that if he had never granted the lands in question to the earl of Portland, he was not of a temper to suffer such a barefaced usurpation, or that if he had been so disposed, from any particular favour to that lord, his parliaments, who exclaimed so loudly against some of the crown grants, were not of a disposition to have connived at it.

This will shew a strong probability, that these lands were then supposed to be within the grant; and as to the idea of its having expired for want of power in the king to grant *for ever*, I have already sufficiently exploded that.

I shall now take leave of this judicious and impartial writer for awhile, having sufficiently refuted those arguments (if they may be so called) which relate to the duke's title, and proceed to state what appears to me, after considering the publications on each side, to be the true state of the case.

The duke of Portland's title appears to be founded on a grant from king William to his great grandfather, of the honour of Penrith, with its appurtenances, &c. Which grant that king had a legal power to make. Whether the lands in question are appurtenances of that ho-

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nour or not, is a question of such difficulty and intricacy, that I am convinced the public will not think either the surveyor-general, or his deputy, proper persons to decide upon it.

That some part of the forest of Inglewood was granted to Mynheer Van Bentinck, as the author of the Reply is pleased to call the earl of Portland, appears from his own words, which he seems to have learned from the so-much-vaunted report of the surveyor-general.

“ In this instance of this writer,” (meaning the writer of the Case) “ it appears the
 “ more extraordinary, since he must be
 “ supposed to have seen the state of the
 “ crown title, delivered to the duke of
 “ Portland, and be convinced, if he has
 “ capacity sufficient to be capable of conviction, that what is now conveyed to
 “ Sir James, neither could be, nor is contained in king William’s grant to Myn-
 “ heer Van Bentinck ; and that *all those*
 “ *parts of the forest of Inglewood, which*
 “ *were then granted to that illustrious ancestor,* are specifically excepted in the lease
 “ granted to Sir James Lowther, and still
 “ remain untouched to the duke of Portland.”

This contains a direct admission, so far as his authority will go, that *some part at least of the forest of Inglewood, was actually*

tually granted to the earl of Portland by king William. Whether any, and what part of it is excepted in the lease to Sir James will best appear from the surveyor-general's constats in the appendix to the duke of Portland's case, N^o 9.

This being the title of the duke of Portland, so far as it appears at present to the public, I should next consider the conduct of the board in regard to it; but must first beg leave to stop a little, to shew what has been the law, and the ideas of former times, in regard to grants and resumptions by the crown.

That the kings of England always had, till the 1st of Anne, an undoubted right to alien in fee those possessions of which they were seised in fee, I have already proved by indisputable authorities. That such alienations when very exorbitant, or grossly misapplied, were often found inconvenient to the crown, and were complained of by the people, I do not deny: but I shall shew, by the very measures taken in consequence of those inconveniences and complaints, that it has not only been the constant sense of parliaments in former times, but of the kings themselves, that such grants could not be resumed, however inconvenient to both king and people, by the king alone, without the authority of parliament.

In the 5th year of Richard II. "The
 " commons pray the king, that he will
 " make no grant without the assent of the
 " lords of the council, till he be out of
 " debt." Rot. Par. 5 Ric. II. p. 1, N^o 74,
 (the same in 11 H. IV.)

There are many acts of resumption by
 our ancient kings, which were most of
 them by petition, and all by the authority
 of parliament.

In the 6th of Henry IV. an act of re-
 sumption being proposed, it only passed,
 that the king should recover one year's pro-
 fits of the lands, &c. in grant. And the
 record contains the remarkable words that
 follow, " Also considering the grants made
 " by patents under the great seal of the
 " king, and of his progenitors and prede-
 " cessors, to divers persons, as well for
 " term of life, as *in fee simple*, or in fee
 " tail, or otherwise, *it would not be honest,*
 " *nor expedient, for the king our lord, to*
 " *make repeal, revocation, or resumption of*
 " *any such patents*, and that as well for the
 " clamour and other inconveniencies that
 " might happen, &c. therefore it is agreed,
 " &c." Rot. Par. 6 H. IV. N^o 21.

This shews abundantly the sense of those
 times in regard to any invasion of private
 property (for such undoubtedly the re-
 sumption

sumption of legal grants is) even by authority of parliament.

Indeed the rights of private property are so sacred, that nothing but the omnipotence of the whole legislative body can legally interpose in regard to them, and even that interposition should be made with a very cautious and sparing hand, and can only be justified by some default in the persons whose property is invaded, or by the extreme necessity and danger of the state.

Henry VI. who, during almost the first half of his reign, was an infant in years, and during the whole of it little more in understanding, had been induced to make a profusion of exorbitant and unnecessary grants to many undeserving people, so as to reduce the royal estates to the yearly value of 5000 l. This produced, in the 28th year of his reign, a petition from the commons, which, after reciting the debts of the crown, and the diminution of its revenue, goes on thus;

“ Wherefore please it youre highnesse,
 “ the premisses graciously to consider; and
 “ that ye by the advyce of youre lordes spi-
 “ rituels and temporels, and by auctorite of
 “ this youre present parlement, for the conser-
 “ vacion of your high estate, and in comfort
 “ and ease of youre pore commons, wold
 “ take, resume, seise, and reteine in youre
 “ bandes and possession all honoures, &c. the
 “ whiche

“ whiche ye have graunted, &c. sythe the
 “ 1st day of your reigne, &c.” Rol. Parl.
 28 Hen. VI. No. 53.

(N. B. Here is no mention of resuming lands, &c. by the sole authority of the crown, or of taking them from one person to grant them to another.)

The king's answer runs thus,

“ The kyng by the advyce and assente
 “ of the lords, &c. in this presente parle-
 “ ment assembled, and by auctorite of
 “ the same, agreeth to this petition and
 “ resumption, &c.” Rot. Parl. ut. sup.

In this act the house of commons thought it reasonable to make it so general, that they inserted only 16 reservations for particular persons, *so much did they consult the public more than any private interest.*

There were afterwards two other resumptions in the reign of Hen. VI. 29, 33 years; in the same manner, and by the same authority, in which there is nothing very remarkable.

In the 1st of Edw. IV. there was an act of resumption (by authority of parliament) of all the lands, &c. granted during the reigns of the house of Lancaster, on which Davenant, a very judicious writer in the reign of William III. who wrote expressly in favour of resumptions, makes the following observation:

“ This

“ *This resumption looking so far back-*
 “ *wards, as the reigns of Henry VI. Henry*
 “ *V. and Henry IV.” (only 62 years)*
 “ *was too large to have any good effect;*
 “ *and as to its being impracticable, and*
 “ *not well concerted, we have this argu-*
 “ *ment, that a new act better digested,*
 “ *and which did not retrospect so far, was*
 “ *thought necessary only three years after.*
 Dav. 209.

And now I shall close this enumeration
 of resumptions, of which I am afraid my
 readers are already tired, with one more in
 the reign of Ed. IV. which will shew the
 idea that he, *who was no very mild or tim-*
id prince, entertained of his own power
 in this respect.

In the 7th year of his reign, finding
 himself still very much hampered in his
 revenue, we find him addressing his par-
 liament in the following terms.

“ John Say, and ye, firs, comyn to this
 “ my court of parlement, for the comon
 “ of this my lond; the cause why Y have
 “ called and summoned this my present
 “ parlement, is, Y purpose to live upon
 “ my nowne, and not to charge my sub-
 “ getts, but in grete and urgent causes,
 “ concerning more the wele of theymself,
 “ and also the defence of theym, and of
 “ this my reame, rather then my nowne
 “ pleafer, as heretofore by comons of this
 “ lond

“ lond hath been doon, and born unto
 “ my progenitours in tyme of nede;
 “ wherein Y trust, that ye firs, and all
 “ the comons of this my lond, wol be as
 “ tender and kind unto me in such cafes
 “ as heretofore eney comons have been to
 “ eney of my seid progenitours. And for
 “ the good wills, kindnesse and true herts
 “ that ye have borne, continued and showed
 “ unto me at all tymes heretofore, Y thank
 “ ye as hertily as Y can; as so Y trust you
 “ wol conteneue in tyme comyng; for the
 “ which, by the grace of God, Y shall
 “ be to you as good and gracious a kyng,
 “ and reigne as reight wisely upon you as
 “ ever did eney of my progenitours upon
 “ comons of this my reame in days paste;
 “ and shall also in tyme of nede aply my
 “ person for the wele and defence of you
 “ and of this my reame, not sparyng my
 “ body nor lyfe for eney jeopardie that
 “ mought happen to the same.”

This soothing speech was only to introduce an act of resumption, which was presented by the king, and procure the sanction of the authority of parliament, which went backwards but seven years. See Rot. Par. 7 Ed. IV. No. 7, l. 8.

Before I conclude this article, I must beg leave to make some general observations: That, there is no instance after the reign of Henry III. (for before that time it is impossible

impossible to speak with equal certainty) of a resumption of crown lands without the advice and authority of parliament, not even in the most arbitrary reigns, or in that of Henry VIII. *that legal robber of his people.*

That there is no act of resumption except that of the 1st Edward IV. which has been already observed upon, and one in the reign of Henry VII. relative to the York family, which goes back above 50 years, and but one which exceeds 33 years.

That all the acts of resumption are general (with some particular savings) except some few in the reign of Henry VII. whose reign was a series of extortion, which however *he dared not to commit without colour of law or authority of parliament.*

And that such acts of resumption have been generally assented to by the kings of England with some reluctance, merely to gratify their people, and relieve them from the burden of excessive taxes.

These observations lead me to the last thing which I proposed to consider, which is the conduct of the administration relative to the grant in question; 1st. supposing the strict legal merits to be with the crown; and 2dly, supposing them to be with the duke of Portland.

F

First,

1st. Supposing the strict legal right to the lands in question to be in the crown, the case will stand thus:

The servants of the crown, desirous either of encreasing the revenues of their master, or of enriching the creatures and dependents of their master's favourite, (which of these was their motive the public will judge from their actions) but, however, actuated by one or other of these motives, set about to search into, and ransack the records relative to the crown lands, *to see what flaws they could discover in the titles of his Majesty's subjects.* Is this an employment fit for the servant of the greatest monarch in the world?

I have often heard of a pettyfogging attorney in the country, spending much time and pains in such researches; but, thank Heaven! I have seldom heard or read of the ministers of a great prince busying themselves in that manner.

But be this as it will, the servants of the king of England, in such pursuits, have not been unsuccessful. They have discovered, *or say they have discovered*, among other things, (for we cannot suppose that in a search for so many years back they have made but one discovery) they have, I say, discovered, *among other things*, that the duke of Portland has no legal title

title to an estate, which he and his ancestors have possessed for 70 years. That king William either did not expressly include that estate in the grant to the earl of Portland; or, if he did, that he had no right to do so, it being settled in marriage on queen Catharine, who was then still living. Their exultation at this discovery, might, perhaps, be a little checked at first by the long possession of his Grace's family; but, luckily, they recollected that *nullum tempus occurrit Regi*, and so they resolved to *begin* their work with the duke of Portland.

I say to begin, for I think I have sufficient authority to say that this is *but a beginning*, from the following words in Mr. Cooper's last letter. " His (the " surveyor-general's objections to the inspection were so strongly marked and " expressed, that the lords" (of the Treasury) " were of opinion that they could " not direct it to be allowed, without " the hazard of great inconvenience and " prejudice to his Majesty's interest on " *future similar occasions, and applica-* " *tions.*"

Having taken this resolution, Sir James Lowther was immediately pitched upon as a proper person to whom to transfer the duke's property. He was informed, that the possession of the premises in question

had been for many years withheld from the crown; in consequence of that information, on the 9th of July 1767, he presented the memorial (No, I. in the appendix to the Case). This memorial being referred to the surveyor-general, he returned his report to the Treasury on the 7th of August, containing his opinion that the crown had a good title to, and might grant, the lands in question to Sir James Lowther. Of this memorial and report, it was not thought proper to give the duke any intimation, till at length, on the application of a friend, they condescended to transmit him copies of them.

That this is so far a true state of the case, has not been contradicted, either by the author of the Reply, or any other, on behalf of the administration. And here I think it necessary to expose the most infamous attempt of the Replyer to mislead the public from this last circumstance of the surveyor-general's report being at length transmitted to the duke of Portland.

“ The duke of Grafton being convinced that it was improper to permit the
 “ inspecting of the king's private records,
 “ and yet considering that he had promised his grace of Portland that his agents
 “ should have that liberty, resolved on
 “ the

“ the following method in order to avoid
 “ the complying with the inspection,
 “ and yet virtually to preserve his pro-
 “ mise : he ordered the surveyor-general
 “ to draw out a state of the crown title
 “ to these lands, exactly as it was in his
 “ office, and this being faithfully done,
 “ it was transmitted by the duke of Graf-
 “ ton to the duke of Portland, at the
 “ same time requesting his grace of
 “ Portland, that he would transmit to the
 “ board of Treasury the state of his title
 “ to these lands, that by these means,
 “ being acquainted with the claims on
 “ both sides, the matter in question might
 “ be settled according to right and jus-
 “ tice ; but with this request of sending
 “ his title to the Treasury, the duke of
 “ Portland has never complied to this
 “ hour.

“ Let the world judge of the justice
 “ of that complaint against being denied
 “ the inspection of private records in a
 “ private office, in order to make out his
 “ title to an estate, and of a breach of
 “ promise in the duke of Grafton in not
 “ observing his word on that head, by a
 “ man who has received the state of the
 “ crown's title on the very subject in dis-
 “ pute, and nevertheless refused to give
 “ the state of his title in return, and in
 “ order to come at right and justice.

The

“ That the tranfaction has passed in
 “ the manner which is above related, I
 “ have now indisputable authority to
 “ affirm; let this sorry writer either prove
 “ this relation to be false, or confess his
 “ disingenuous and criminal behaviour
 “ in misrepresenting some parts and con-
 “ cealing the rest.”

Would not any person who read this, imagine that the duke of Grafton (after he had been applied to for an inspection, and after the surveyor-general had, by his 2d report, convinced him that such inspection was improper) had got the surveyor-general to draw up the state of the crown title here mentioned, and had transmitted it to the duke of Portland, that he had waited a reasonable time for that nobleman to prepare to set forth his title, and had not at length determined the matter against him till after a positive refusal on his part to produce his title: would not any reader, I say, take this to be the true state of the case, and more especially when he is told that the writer has *indisputable authority* for what he affirms?

But, unfortunately both for the writer and his indisputable authority, there is a proof arising from dates, which affords a very stubborn kind of evidence, and from whence I shall shew, that it is impossible these assertions can be true. (The duke
 of

of Portland's memorial demanding an inspection, &c. is dated the 2d of Decem.) Mr. Bradshaw's letter, by order of the Treasury, directing the inspection, the 12th of December. The surveyor-general's report, refusing that inspection, is dated the 15th of December. The order of the Treasury, for making out the leases to Sir James Lowther, is dated the 17th; and Mr. Cooper's letter, informing the duke thereof, and containing a copy of the surveyor's refusal, is dated the 22d of the same month, on which day the board of treasury adjourned for the holidays; and before they met again the leases had passed through all the forms, and were actually delivered to Sir James Lowther.

I should be glad the writer would inform the public, in which period of this time this boasted transaction passed. It could not be previous to the 15th of December, *because it was in consequence of the duke of Grafton's conviction, which must be after the surveyor's report.* It is plain he was not convinced on the 12th, for then he ordered the inspection. If it was after the 17th it was too late, for then it was quite unnecessary for the duke of Portland to produce his title, the final order for making out the leases being then signed. We have therefore two
days

days for the duke of Grafton to invent this notable equivocation to excuse his breach of promise, for him to order the surveyor-general to draw out a state of the crown title, for the surveyor-general to draw that state, *exactly as it was in his office*, for that state to be transmitted to the duke of Grafton, and by him to the duke of Portland; and for that nobleman either to prepare his title, or evince, by his delay, that he never intended to do it. Judge, O Credulity, of the possibility of this assertion, for which our author says, he has *indisputable authority*.

I confess I am at a loss in what terms to speak of such a misrepresentation as this; indeed language cannot afford it the terms that it deserves: I shall therefore leave it to the silent indignation of every honest man, and shall leave the public to judge, whether this gentleman's assertions of law, or of facts, are most to be credited; and whether any thing was wanting to render the conduct of the administration more infamous, except their employing such an advocate to defend it.

But now that I have shewn the impossibility of this fact being true, as the Replier has represented it, I shall offer a conjecture, as to what really was the fact, which I take to be this: That a state of the title of the crown to the lands in question,

question, was contained in the surveyor-general's first report, which was transmitted to the duke of Portland, but could not be drawn out by order of the duke of Grafton, equivocally to fulfil his promise of inspection, as that promise was not made, nor the inspection demanded, till some months after. If this be the case, we shall see, by a review of the facts subsequent to the transmitting this report, whether the duke of Portland ever refused, or shewed any unwillingness, to produce his title as soon as it could be prepared. The report was transmitted to him on the 2d of September, the time succeeding that was a time of vacation, all the lawyers were out of town, and the Treasury had adjourned till the 9th of October. On the 8th, caveats were entered in the proper offices; and on the 9th, the first day of the sitting of the board, the duke presented a memorial to the treasury, setting forth the general grounds upon which his title was founded, and requesting to be heard by himself or council, "*that he may manifest his right and interest.*" Is there any thing here like declining to make out his title?

To this memorial the remarkable answer was returned, which contains that

G

promise

promise, which has caused so much altercation, and which must brand the makers and breakers of it with eternal infamy. The promise was in these words:

“ And I am directed to assure your
 “ grace, that no step shall be taken to-
 “ wards the decision of the matter in
 “ question, till your grace’s title has
 “ been stated, referred to, and reported
 “ on, by the proper officer, and fully
 “ and maturely considered by the board
 “ of Treasury.”

Whether this promise was ever fulfilled, I leave to any man of common sense to determine, who will take the pains to read the manner in which the Replier endeavours to prove it, p. 19, 20. l. 21. and will compare those pages with these words in p. 29, “ But with this request
 “ of sending his title to the Treasury the
 “ duke of Portland has never complied
 “ to this hour.” Here the writer not only admits, but positively asserts, that the duke of Portland’s title has never been stated to the Treasury; how then could it be “ referred to, and reported on, by
 “ the proper officer,” or “ fully and
 “ maturely considered by the board of
 “ Treasury?” The Replier, at the close of his very ingenious Vindication, p. 21, exclaims with triumph; “ That this
 “ writer,

“ writer, who was never present at any
 “ of these boards, should be better in-
 “ formed in this matter than the secre-
 “ tary, who was, seems a little unac-
 “ countable :” to which I answer, that
 the writer of the case, or any man in
 his senses, may know as well as Mr.
 Cooper, that let that gentleman say what
 he will, the lords of the Treasury never
 could fully and maturely consider, or
 consider at all, a title which was never
 stated to them. This observation alone
 will prove to every man of common
 sense, that the promise never has been
 complied with, and I am sure, every man
 of common honesty will think, that no-
 thing could dispense with the perform-
 ance of it, but an absolute refusal on the
 part of the duke to state his title, or his
 neglecting to do it on a day appointed.

However, the duke of Portland relied
 upon this promise, as every man would
 do, who knew himself incapable of break-
 ing through such an engagement, and em-
 ployed his agents in preparing to fulfil
 his part in making out his title.

Finding that they could the better pro-
 ceed in that business, by consulting the
 records in the surveyor-general's office,
 the duke applied for a permission of such
 inspection, on the 2d of December; the
 inspection

inspection was absolutely refused on the 15th; and immediately after the final order given for making out the leases to Sir James Lowther.

Was there any thing in this whole transaction that looked like a refusal, or unwillingness, in the duke to state his title, or a willingness in the treasury to give him time and opportunity to do so?

A volume of observations might be made on this conduct, even supposing the duke could not make out a legal title against the crown.

It might be said, that the secrecy observed through the whole of this transaction, had not much the appearance of conscious rectitude. The administration might be told, that if they were clear of the title of the crown in this instance, (and had no farther evil intention) the inspection of the records could not much have prejudiced his Majesty's interest.

That as it is not customary, nor legal, in this country, in criminal cases, to condemn even a guilty person unheard, so it is neither proper nor legal, in matters of property, let the title of one of the parties be ever so clear, where there is a colour of right in the other, to determine without hearing the party who sets up that colour, and fully examining his claim.

That

That a 60 year's possession is such a colour of right, as to be an indefeasible title in the case of a subject; and that even a 20 years uninterrupted possession, is a good title in an ejectment, the presumption of law in favour of such possession being, that it had a legal commencement.

If these, and many other observations of the like nature, hold true, of the conduct of the administration, supposing the crown (by its prerogative) to have a strict legal title to the premises in question, what must we say, if we should suppose that strict legal right to be with the duke, which was the next point I proposed to consider? And that such supposition is neither absurd nor improbable, I have already shewn.

To take away the legal rights and property of one of the first subjects in the kingdom under sanction of the authority of the crown, in the manner, and with the circumstances abovementioned, is a proceeding of such a nature, that I shall not give my ideas of it to the public. I shall leave every man to judge of it according to his own principles and feelings; and shall proceed to consider two questions, which may be asked with equal propriety, supposing the right either way; and these are,

are, Why the administration chose to take these lands from the duke of Portland? and why to give them to Sir James Lowther?

I shall begin with the last of these questions, as being the most easily determined, that is, Why the administration chose to give *the estate in question to Sir James Lowther*, in preference to any other man in England? For this there were two very short but very conclusive reasons.

Because Sir James was married to lord Bute's daughter; and

Because he was engaged in a contested election in the county where the estate in question lay.

The last of these reasons will assist us in the solution of the next question, namely, why administration chose to take the estate in question from the duke of Portland? The grand and primary occasion of which spoliation could be no other, but because that nobleman had the impudence to oppose Sir James Lowther in the county of Cumberland.

But though this might be the principal reason, yet I dare say the minions of the Favourite had many other little inducements to pitch upon this very person, and this very estate, with which to begin their grand plan of resumption. Such as,

That

That the duke of Portland's ancestors had a considerable share, in deposing the Stuarts, those hereditary and *jure divino* monarchs of this realm; and in establishing the crown in that succession, which has placed it on the head of the present illustrious possessor.

That the estate in question was given to them by the first monarch in that succession, as a reward for their services in bringing about that establishment.

That the present duke possesses so much of the licentious and dangerous spirit and principles of his ancestors, as to have shewn himself, on all occasions, a sincere and steady friend to the present establishment of the constitution and succession; a zealous asserter of the rights and liberties of the people, and a resolute opposer of all the arbitrary measures of a Tory Favourite.

That he has manifested his dangerous and seditious spirit, by uniformly adhering to these principles, whether in or out of place; and has proved it, beyond a possibility of doubt, by opposing general warrants, seizure of papers, &c. *by protesting against the glorious patriotic vote which gave up the privilege of parliament,* in the case of libels, and by a thousand other instances equally atrocious.

These,

These, and many other circumstances of the like nature, were doubtless very strong inducements to the Favourite and his creatures to begin their glorious work, with *this very person*, and *this very estate*, being, for the reasons abovementioned, of all other persons, and of all other estates, the most obnoxious; and with this I shall finish my observations on the legal, equitable, impartial, and public-spirited conduct of this glorious administration.

T H E E N D.